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NEUTRALITY

The neutral relation is one that is assumed, at the outbreak of public war, by those states whose relations to the belligerent parties have undergone no change as the result of the establishment of the new relations of hostility; it matters not what their connections with the contending parties may have been, so soon as an overt act of hostility has given occasion for the establishment of a war status between them, all powers who are strangers to the controversy assume, as a matter of course, the status of neutrals and become charged with the maintenance of neutral rights and the corresponding performance of neutral duties. The status so created contemplates that the neutral shall continue to maintain the relations of amity that existed with the belligerents at the outbreak of the war, that only the most necessary restraints shall be imposed upon his domestic and foreign relations and upon the commercial activities of his subjects, and that there shall be a complete immunity from the operations of war in respect to his territory and territorial waters.

It was impossible for the theory of neutrality to be widely accepted, or generally practiced, until the principle of state independence had achieved substantial recognition among the nations of continental Europe. So long as an earthly superior was acknowledged in interstate relations, and so long as the Pope and Emperor could command a measure of obedience among them, the status of neutrality, however strongly it might commend itself to the judgment of those who were charged with the conduct of international relations, could not prevail against the authority and influence of the Pope, who dominated in religious

affairs, and the power of the Emperor, who asserted an equal supremacy in purely secular concerns. Neutrality, in the modern sense of the term, owed its beginning to the success of the North European states in the struggle for religious freedom and political independence which culminated in the Peace of Westphalia in 1638. With independence came to each state, especially to the less powerful, the opportunity to decline participation in wars with which it had no immediate concern and to declare their neutrality as between the belligerent parties.

Although the termination of the long series of religious wars gave an opportunity for the development of the Law of Nations in that regard, the times were so unsettled and the obstacles encountered were so difficult that the efforts put forth in its behalf would have met with great discouragement, if not positive failure, had it not been for the powerful support afforded by England, whose insular position secured her from invasion and whose powerful navy protected her widespread commerce from hostile interruption. Our own statesmen of the last century were no more deeply concerned at the prospect of becoming involved in the politics of Europe than were those of Elizabeth's time to hold aloof from continental affairs during the years preceding the accession of the Stuarts to the throne.

For nearly two centuries following the close of the Thirty Years War the great powers were constantly engaged in war, and the smaller and weaker states, however earnest might be their desire to refrain from participation, were unable, standing alone, to secure respect for their neutral rights, or to resort to forcible measures to make good their neutral obligations. A number of able and powerful rulers, of whom Louis XIV and Napoleon were the most conspicuous representatives, were bitterly opposed to the development of neutrality in any form and contributed powerfully to oppose it. It should also be said that the considerations which determined one state to remain at peace were frequently not the same as those which actuated other states to the same end; hence it was that there was not a sufficient community of interest to bring about the formation of leagues and alliances with a view to secure belligerent respect for neutral obligations, of which the Armed Neutralities of the Baltic powers of 1780 and 1800 are examples. As a result it not infrequently happened that the territory of non-participating states was invaded by the armies of the belligerent powers, their towns were plundered, their fields devastated and the burdens of war fell heavily upon

communities that were without interest in the struggle, and whose sole desire was to pursue their commercial and economic development without abnormal interruption. But years were to pass, even after their independence had been conceded in international affairs, before their right to an immunity, as neutrals, from the operations of war was generally recognized and conceded.

Like many other difficult international situations, neutrality is easier to define than to practice. The usual definition of a neutral state, as one which takes no part in an existing war, maintaining its relations of amity with both belligerents, is one that is by no means difficult to understand but which, save for states distant from the theatre of war, is always burdensome and, at times, entirely difficult to maintain. The theory which lies at the base of the present practice is that the operations of war, including its inevitable burdens and sacrifices, should be restricted to the belligerent parties; that states which are not parties to its operations should be permitted to continue their normal and peaceful development, and should be entitled, as of right, to a complete immunity from its effects. But while neutral states are generally understood to be exempt from participation, they become charged, at the outbreak of war, with the performance of certain duties, and are acknowledged to possess certain rights which the belligerents are bound to respect and which, if trespassed upon or invaded, may be made the subject of diplomatic protest and may be vindicated, if need be, by resort to armed force.

With a view to a correct understanding of the situation of such a state, it will be borne in mind that the maintenance of its neutral status requires the state to insist upon certain rights and to fulfill, impartially, as between the contending powers, certain neutral obligations. With the performance of some of these duties the state itself is specially charged, as the acts are of such a character that no authority save that of the government is able to comply with the requirements of the Law of Nations in that regard; other neutral duties relate to the acts of individuals which, if injurious to the interests of belligerents, are prevented by the belligerents themselves, as will presently appear, or by the adoption by the neutrals of certain regulations which are calculated to prevent violations of neutral duty by their citizens or subjects. In theory, at least, the neutral state is indifferent as to the causes of the war and is equally without concern as to its results; its chief desire being that its friendly relations shall be

preserved with the states at war, and that the commercial and business activities of its subjects shall continue without belligerent interruption.

In so far as the government of the neutral state is concerned, its duties and obligations are relatively simple and are enforced without substantial difficulty. It must refrain from assisting either of the contending powers in its military operations, or from furnishing aid to either government, even where the assistance which it is proposed to afford is declared to be equally available to both; but no specific act or policy can be conceived of which will be of such equal advantage: hence the rule that the neutral state may afford no assistance, of any sort, to either belligerent in the prosecution of his military or naval operations. He may impose as many restrictions as the situation seems to demand, but they must bear with equal force upon both of the combatant parties.

The neutral state is also entitled to a complete immunity from acts of belligerency, which cannot be committed within its territory or territorial waters. Land forces may not pass its boundaries, save to seek asylum from a victorious enemy, and must be disarmed and interned by the neutral so soon as they pass the frontier. It is entitled to an equal immunity from the maritime undertakings of the belligerents. Captures made in neutral waters must be restored upon the demand of the state whose neutral obligations have been violated. So strictly is this rule applied that even small bodies of troops are not permitted to cross neutral territory, even in time of peace, save under circumstances of grave emergency and then only in the operation of an agreement covering all the incidents of the transit.

As all acts of hostility must take place in the territory or territorial waters of the belligerent parties, or on the high seas, it follows that hostile expeditions must originate in the same places. If such an undertaking is prepared in neutral territory, or originates in a neutral port, the belligerent who suffers from its activity is injured to precisely the same extent as if it had been set on foot in a port of the enemy, and such place of origin becomes, for the time being, hostile territory, and may be so regarded by the belligerent. It is therefore the first duty of a neutral state to prevent its ports and waters from being used for such a purpose. It also follows that a belligerent may not exercise any form of preventive jurisdiction in neutral territory, and he is equally forbidden to set up a blockade in front of a neutral port.

A neutral government is also forbidden to furnish money, troops, or munitions of war, to the combatant states, or to render military or other service to either or both of them: nor may its territory be used as a recruiting ground by either power: but it is neither required nor expected to prevent individuals from going abroad, individually, to enlist in the military service of the belligerents.

The rights of neutral citizens stand upon a somewhat different basis. The states toward which they stand in that relation take no part in the war, and their right to maintain their ordinary commercial intercourse with the belligerents, as in time of peace, has long been conceded, but subject, however, to a number of important restrictions which will presently be explained; and these restrictions are imposed, not by their own governments, but by the belligerents, in order to prevent, or minimize the consequences of such intercourse upon their military operations. The parties to the great contest now in progress on the continent of Europe have the right to resort to such measures as will be calculated to prevent arms and munitions of war from being introduced into the theatre of war, by persons in the United States, for example, whose business it is to furnish such articles to all who desire them, independently of the existence of war. As many of the articles which go to make up this commerce are useful in war and are, for that reason, in the highest degree serviceable to the belligerent parties, they are permitted, in the exercise of the right of national self-defense, to stop and search all neutral vessels on the high seas with a view to ascertain whether they contain what is called *contraband of war*—that is articles useful to a belligerent in his military operations. But this right, like that of blockade, must be exercised upon the high seas or in the territorial waters of one of the belligerents, but never in neutral waters; and the neutral ship must submit to such examination upon penalty of confiscation. The right to capture and condemn contraband does not apply to the non-contraband part of the cargo, unless the contraband, in point of value or quantity, is so great as to give rise to the presumption that the owner of the ship is aware of the use to which the vessel is being put, in which case the ship shares the fate of the cargo; the presumption being that it is being put to illicit use with the knowledge and consent of its owner.

It is easy to define contraband, but it is far from easy to prepare a list of articles which have the character of contraband to

such a degree as to warrant their capture and condemnation under all possible circumstances; the preparation of such lists has been attempted from time to time, but never with such success as to warrant their general adoption. The most recent of these efforts is that contained in the Declaration of London of 1909, which contains lists of absolute and conditional contraband, the former being liable to capture when found on the high seas with a belligerent destination, the latter becomes liable to capture only when the character of the cargo and its ultimate destination are such as to warrant the belief that it is intended for the use of a belligerent. It is not difficult, however, in the case of a particular article, or cargo, when its contents and destination are fully known, to determine its liability to capture and condemnation, and the judgments of prize courts in that regard are generally accepted as final.

With a view to mitigate, to some extent, the rigor of the restrictions thus imposed upon neutral commerce in time of war, what is known as conditional contraband has been recognized; that is certain articles are regarded as liable to capture when destined to a hostile port, or to the land or naval forces of the enemy, but are not so liable when their ultimate destination is neutral, or when they are destined to civil, as distinguished from military use. In all cases the liability to condemnation is determined by the destination of the goods—for they may have a hostile destination when the place to which they are consigned is in a state without a maritime frontier. If the destination is neutral there is a strong presumption of innocence, and the burden of proving the contrary rests upon the captor; otherwise, however, where the destination is hostile, even though the cargo be destined to an intermediate neutral port, with a view to its transhipment to some other form of marine transportation for the residue of the transit.

It will thus appear that the right of search, an extremely onerous one in so far as neutrals are concerned, may be exercised upon a neutral merchant ship at any point upon its voyage, either upon the high seas or in the territorial waters of a belligerent. Efforts were put forth at the London Conference of 1909 to relieve this situation by a clause restricting its exercise to the area of operations of a blockading belligerent; the right of convoy was also restored in the operation of a requirement that a fleet of merchantmen, if accompanied by a public armed vessel of the same nationality, are exempt from visitation and search.

Whether the remedies so provided will operate efficiently to relieve neutral shipping from the burdens to which it is now subjected can only be determined after the rules have been given the test of practical experience in time of public war.

Questions respecting the validity of maritime captures are determined by tribunals of the captor state which, on account of the jurisdiction exercised by them, are called "prize courts." One of the most important of the stipulations of the Convention of The Hague of 1907 provided for prize courts of appeal, to which the decisions of the court having original jurisdiction in prize cases may be carried with a view to a judicial review.

The Law of Nations places another instrumentality in the hands of belligerents with a view to prevent neutral interference with their military operations. The right to seize contraband, although a most important one to belligerents, is not sufficient, standing alone, to enable them to prevent neutral assistance from reaching the enemy; a more efficient agency for that purpose is found in the right of blockade. The seizure of contraband is restricted to articles that are primarily useful to a belligerent in his military operations, and such seizures can only be made on the high seas or in the territorial waters of a belligerent. The right of blockade goes further than this and, if fully and efficiently exercised, is calculated to prevent all neutral commerce with the ports and coasts of the enemy. A blockade is established by the stationing of war vessels opposite the ports of the enemy with a view to preclude the entrance or exit of all neutral commercial vessels; to ensure thoroughness the naval blockade may be supplemented by the erection of shore batteries, commanding the entrances to the blockaded port. When such an obstruction has been regularly proclaimed and established, all craft that attempt to enter or leave the blockaded port are liable to capture, and the right of search may be exercised at any place between the port of departure and the port which is undergoing blockade; attempts to violate the blockade by egress may be pursued to the territorial waters of the ship's destination. The penalty for an attempted breach of blockade are extremely severe and include the forfeiture of both ship and cargo.

Another form of unneutral service, which is becoming more frequent, perhaps, than it was in the early years of the Nineteenth Century, is that of the neutral carriage of the enemy's troops and dispatches. These acts are so clearly inconsistent with neutral duty as to warrant condemnation in all cases in which the char-

acter of the passengers is known to the carrier, or to a case in which such knowledge may be fairly presumed from the facts. A neutral may also assist one belligerent to the detriment of the other by the conveyance of dispatches, but the circumstances must be such as to disclose an intent to render unneutral service, as their conveyance in the ordinary course of the mails, or by telegraph or cable lines, which are open to the public generally, is not properly the subject of belligerent complaint. This matter, which has given occasion for frequent misunderstanding in the past, has recently been made the subject of efficient but reasonable regulation in The Hague Conventions of 1907. Cables connecting neutral territories may not be cut under any circumstances; if the lines connect neutral and belligerent territories, they may be cut by a belligerent where the line enters hostile territory.

For more than a century neutral rights and duties were determined by the generally accepted rules of international law, and received no conventional support until the adoption of the Declaration of Paris in 1856 established the well known rules governing blockades and the liability of neutral goods to capture at sea. The Peace Conference of 1907 at The Hague left little to be done in the way of making clear the rights and duties of neutral states and individuals and in providing remedies for their violation. The enforcement of neutral rights has always been easy to a state powerful enough to command respect for its neutral obligations, independently of treaty stipulations; not so, however, with powers of the second class, whose position in time of war is habitually neutral and who are greatly aided in their efforts to maintain that status by the plain and unmistakable requirements of treaty stipulations. England, Germany or the United States may demand of a belligerent complete respect for their neutral rights, but that this is not true of a less powerful state is indicated by the case of Belgium which found, at the outbreak of the existing war, that the explicit provisions of a solemn international guarantee did not avail to secure the neutrality of her territory.

The humane requirements of these undertakings had received the support of the entire civilized world, and were confidently relied upon to relieve the Belgian government from embarrassment whenever the existence of public war menaced its attitude of friendliness to the belligerent powers. The neutrality of Belgium and Switzerland, which had been made the subject of special guarantees, was regarded as determining the military

policy of those states in their relations with their neighbors. More than this, it was believed that the mere existence of these agreements would operate, not only to restrict military operations to belligerent territory, but would furnish a striking example for the guidance of other states under similar circumstances. But Switzerland has been compelled to resort to an extensive and costly mobilization of its military forces, in order to secure respect for its territory, while Belgium has been occupied by the forces of one belligerent and has become the theatre of one of the greatest and most destructive wars of modern times, and now finds itself compelled to bear the heavy burdens and sacrifices of a war in which it was its sole desire to refrain from participation.

It has been seen that the case of the second class powers was taken into serious consideration by the Second Peace Conference at The Hague, which afforded them substantial conventional support in their efforts to maintain their neutral obligations during the existence of a general European war. Two of these conventions have for their especial purpose to define the rights and duties of neutral states and individuals in time of public war. These undertakings cover substantially the entire field of neutral obligation and are especially clear in respect to the character and extent of the control which governments must exercise over the activities of their subjects. In some respects this control must be so extensive as to amount to a complete prohibition as to acts committed in neutral territory, over which, from the circumstances of the case, the belligerent is not permitted to exercise control. Such are the clauses in the matter of recruiting and the fitting out or augmenting of maritime expeditions, the sale of war vessels, including torpedo craft, mine planters and the like, whose character and purpose are obvious from their special construction. As these undertakings are carried on in neutral territory, over which the belligerents are not permitted to exercise any form of police jurisdiction or administrative control, and as they emerge from a neutral port as hostile expeditions, ready to operate as such, the neutral government is bound to prohibit their construction and to prevent their departure. Of these acts of unneutral service we have examples in the construction of the Alabama and other Confederate privateers in the ports and territorial waters of Great Britain. As to other acts of individuals, such as the carrying of contraband, or the attempt to enter blockaded ports, the neutral governments are wholly without responsibility, as the Law of Nations clothes the belligerent who suffers from their

operations with a sufficient power to prevent them. Further than this in support of neutrality international law cannot safely go without giving its sanction to an amount of interference in the internal administration of neutral states which would be found intolerable, even in time of war.

No duty with which a sovereign state is charged is more vitally important to the world's welfare than that of maintaining its neutrality as between the contending powers in time of war. If that duty is strictly and efficiently performed, the inevitable result will be to restrict its operations to the military forces of the contending powers, to confine them to belligerent territory and thus to ensure the peaceful development of the powers which refrain from participation. But such a fortunate result cannot be expected if a powerful belligerent, equally bound to respect the rules of international law, which are supported by the solemn obligations of treaties, seizes the occasion, in a time of profound peace, not only to repudiate their essential requirements, but to convert the guaranteed territory of a neutral into the theatre of a cruel and sanguinary war.

The states of the civilized world, in the face of great difficulties, have steadily favored the development of the neutral theory and cannot without serious concern see the work of years thus lightly repudiated and set aside, even though the violation of neutral obligation is said to be based upon the right of national self-defense. The doctrine of self-defense is best served by a state which, at the outbreak of war, strictly observes the neutral rights of its neighbors and demands of them an equally rigid observance of their neutral obligations. It is impossible to conceive of an exercise of that important right which can only be given effect by a disregard of treaty stipulations which were deliberately entered into with a view to prevent such a violation of international peace as is now in progress on the continent of Europe.

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